

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF GUAM**

UNITED STATES OF AMERICA,	)	CRIMINAL CASE NO. 91-00103-001
	)	
Plaintiff,	)	<b>SUPPLEMENTAL</b>
	)	<b>DECLARATION IN SUPPORT OF PETITION</b>
vs.	)	
	)	
MICHAEL S.N. PALACIOS,	)	
	)	
Defendant.	)	
_____	)	

**Re: Violation of Supervised Release Conditions; Request for a Warrant**

I, U.S. Probation Officer Maria C. Cruz, am the U.S. Probation Officer assigned to supervise the Court-ordered conditions of supervised release for Michael S.N. Palacios, and in that capacity declare as follows:

On May 25, 2007, U.S. Probation Officer Robert I. Carreon filed a Petition for Warrant or Summons for Offender Under Supervision and requested a Warrant of Arrest for Michael S.N. Palacios relative to violations of supervised release, to wit: failing to refrain from the unlawful use of a controlled substance by using methamphetamine on April 11 and April 24, 2007; committing a new crime of Assault by brandishing a box-cutter to his brother-in-law and making a threat; failing to follow the instruction of the probation officer by not attending compliance meetings at the U.S. Probation Office on May 1 and May 7, 2007; and failing to participate in a mental health treatment program by not attending a counseling appointment on May 5, 2007.

With regard to the Assault incident, on May 23, 2007, Mr. Palacios was charged with an offense, to wit: Assault, in violation of 18 U.S.C. §§ 7(3) and 113(3), in the District Court of Guam under Criminal Case No. 07-00046. However, on July 24, 2007, Special Assistant U.S. Attorney Ryan Andersen filed a motion to dismiss the case with prejudice due to the inability to establish a

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*prima facie* case beyond a reasonable doubt based on the facts that the defendant was not interviewed by the Naval Criminal Investigative Service; the victim did not want the case to proceed; and there were no other witnesses to the case. On July 25, 2007, Chief Judge Frances Tydingco-Gatewood granted the government's motion to dismiss the case with prejudice.

Pursuant to the request by U.S. Probation Officer Robert I. Carreon, a Warrant was issued for Mr. Palacios on May 25, 2007 and it was executed on June 1, 2007. On June 4, 2007, Palacios appeared before the Honorable Joaquin V.E. Manibusan, Jr., U.S. Magistrate Judge, for an Initial Appearance Hearing regarding revocation of supervised release hearing. Attorney William L. Gavras was appointed to the case and the court set a Preliminary Revocation Hearing for June 7, 2007. On June 7, 2007, at the Preliminary Revocation Hearing, the court scheduled an Evidentiary Hearing for August 2, 2007, which was later rescheduled to August 9, 2007.

On August 9, 2007, Mr. Palacios was brought before Judge Manibusan for an Evidentiary Hearing. In a joint recommendation by the parties and the U.S. Probation Office, Mr. Palacios was released from custody in consideration of positive mental health treatment reports while in custody, as well as the government's dismissal of Criminal Case No. 07-00046. The alleged violations were to be addressed by District Chief Judge Frances Tydingco-Gatewood at a Disposition Hearing upon the issuance of a Report and Recommendation to the district judge by the magistrate judge. All current conditions of supervision were reimposed by the Court.

This report outlines additional violations committed by Mr. Palacios since being released from custody on August 9, 2007. All of the allegations are in violation of 18 U.S.C. § 3583(d):

**Mandatory Condition:** *The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit up to eight drug tests per month as directed by the U.S. Probation Office.*

**Special Condition No. 2:** *Defendant shall participate in a program approved by the U.S. Probation Office for drug and alcohol dependency which will include testing for the detection of substance use or abuse. It is further recommended that the defendant will make a co-payment for treatment at a rate to be determined by the U.S. Probation Office.*

A review of records from the partnership of Melendez/Benavente revealed that Mr. Palacios tested positive for methamphetamine on October 5, 2007 as confirmed by his signed admission form; failed to show for drug testing and alcohol testing on December 28, 2007; had a diluted specimen on January 11, 2008 as confirmed by Kroll Laboratory Specialists; tested positive for methamphetamine on January 16, 2008 and January 24, 2008 as confirmed by his signed admission form; and failed to show for drug testing on February 1, 2008.

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**Standard Condition 3:** *The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.*

In accordance with the drug treatment and testing policy of the U.S. Probation Office, on October 5, 2007, Mr. Palacios was instructed by testers to report to the Probation Office on October 8, 2007, for a mandatory compliance meeting to address the drug and alcohol violations. Two days later, on October 10, 2007, he reported to the Probation Office for a compliance meeting. He admitted using methamphetamine on October 3, 2007, to medicate a toothache because he was unable to arrange for emergency dental treatment through the Department of Public Health and Social Services. He had no explanation for using alcohol as detected by testers on October 5, 2007. Additionally, he offered no reason for missing the required compliance meeting on October 8, 2007.

On December 14, 2007, at the testing vendor site of Melendez/Benavente, Mr. Palacios tested positive for alcohol with a reading of .048. He was told by this probation officer to return within a few minutes for a second test but left the vendor site without being tested.

**Standard Condition 5:** *The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons.*

To date, Mr. Palacios remains unemployed and cites that he has been unable to find employment due to his criminal record and lack of skills.

**Special Condition No. 1:** *Defendant shall submit to a mental health assessment approved by the U.S. Probation Office, and shall participate in any recommended treatment as a result of that assessment. The defendant will also make a co-payment for treatment at a rate to be determined by the U.S. Probation Office.*

A review of the Monthly Treatment Reports from Marianas Psychiatric Services (MPS) showed that Mr. Palacios failed to show for counseling appointments on October 27, 2007, November 18 and 25, 2007, and December 7, 2007. Moreover, MPS had no contact with Palacios in January 2008 and February 2008.

**Special Condition 3:** *The defendant shall refrain from any and all use of alcohol.*

On October 5, 2007, at the testing vendor site of Melendez/Benavente, testers noticed the odor of an intoxicating beverage emitting from Mr. Palacios. He verbally admitted to testers that he had consumed alcohol earlier. On December 14, 2007, at the testing vendor site of Melendez/Benavente, Mr. Palacios was positive for alcohol with a reading of .048.

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**Supervision Compliance:** Mr. Palacios remains unemployed while his wife works as a contract employee stocking the shelves at the Navy commissary. Mr. Palacios submits his monthly supervision reports on a timely basis and is aware that these additional violations will be addressed by the court.

Mr. Palacios receives psychotropic medication from Marianas Psychiatric Services to stabilize his anxiety and paranoia. MPS opined that Palacios's prognosis is guarded as he struggles with not only feelings of paranoia and anxiety, but with financial difficulties and lack of employment which has resulted in increased stress and frustration. He is in Phase One of mental health counseling and was regressed to Phase One for drug testing effective January 25, 2008.

**Recommendation:** Based on the above-outlined conduct, the Probation Officer has determined that Michael S.N. Palacios is a danger to the community and respectfully requests that the Court issue a Warrant for him to appear at a Disposition Hearing to answer or show cause why supervised release should not be revoked, pursuant to 18 U.S.C. § 3583(e)(3).

I declare, under penalty of perjury, that the foregoing is true and correct, except those matters stated upon information and belief, and as to those matters, I believe them to be true.

Executed this 11<sup>th</sup> day of March 2008, at Hagatna, Guam, in conformance with the provisions of 28 U.S.C. § 1746.

Respectfully submitted,

ROSSANNA VILLAGOMEZ-AGUON  
Chief U.S. Probation Officer

By:



/s/ MARIA C. CRUZ  
U.S. Probation Officer

Reviewed by:



/s/ CARMEN D. O'MALLAN  
U.S. Probation Officer Specialist  
Supervision Unit Leader

cc: Marivic P. David, AUSA  
William L. Gavras, Defense Counsel  
File